

## Internal Revenue Service, Treasury

## § 31.6413(a)-1

filed by the employee for refund of employee tax paid by such employer to the district director. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer.

(ii) Each individual who makes a claim under subparagraph (1) of this paragraph for refund of employee tax under section 3101, or a corresponding provision of prior law, also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his income tax, and the amount, if any, so claimed (see § 31.6413(c)-1).

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37379, July 1, 2008]

### § 31.6402(a)-3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in § 301.6402-2 of this chapter (Regulations on Procedure and Administration). See § 31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.

### § 31.6404(a)-1 Abatements.

For regulations under section 6404 of general application to the abatement of taxes, see § 301.6404-1 of this chapter (Regulations on Procedure and Administration). Every claim filed by an employer for abatement of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, shall be made in the manner and sub-

ject to the conditions stated in paragraphs (a) (2) and (c) of § 31.6402(a)-2, as if the claim for abatement were a claim for refund.

### § 31.6413(a)-1 Repayment or reimbursement by employer of tax erroneously collected from employee.

(a) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Overcollection ascertained before return is filed.* (i) If an employer during any return period collects from an employee more than the correct amount of employee Federal Insurance Contributions Act (FICA) tax under section 3101 or employee Railroad Retirement Tax Act (RRTA) tax under section 3201, and if the employer ascertains the error before filing the return on which the employee tax is required to be reported, repays or reimburses the amount of the overcollection to the employee before filing the return for such return period, and obtains and keeps as part of its records the written receipt of the employee showing the date and amount of the repayment or evidence of reimbursement, the employer shall not report on any return or pay to the IRS the amount of the overcollection.

(ii) Any overcollection not repaid or reimbursed to the employee as provided in paragraph (a)(1)(i) of this section shall be reported and paid to the IRS on the return for reporting such tax for the return period in which the overcollection is made. However, the reporting and payment of the overcollection may subsequently be treated as an overpayment error ascertained after the return is filed for purposes of paragraph (a)(2) of this section.

(iii) For purposes of this paragraph (a)(1), an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(2) *Error ascertained after return is filed.* (i) If an employer files a return for a return period on which FICA tax or RRTA tax is reported, collects from an employee and pays to the IRS more than the correct amount of the employee FICA or RRTA tax, and if the employer ascertains the error after filing the return and within the applicable period of limitations on credit or refund, the employer shall repay or reimburse the employee in the amount of